

# DIFFERENCES AMONG HOME RULE, FIRST CLASS, SECOND CLASS AND THIRD CLASS BOROUGHS

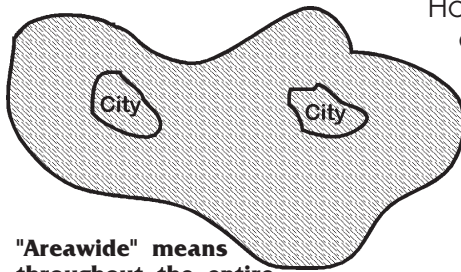
Prepared by Local Boundary Commission Staff, February 25, 1994

The difference in the powers available to and the duties required of home rule, first class and second class boroughs is minimal. Home rule boroughs, first class boroughs and second class boroughs all have broad capacity to take on various powers. Third class boroughs have limited capacity for areawide and non-areawide powers, but broad capacity for service area powers.

However, authority to exercise any power must be lawfully obtained. There is considerable distinction among the four classes of boroughs concerning the manner in which each may gain authority to exercise a particular power. These distinctions are summarized in the following chart. The chart is followed by a discussion of the topic.

POWER	AREAWIDE				NON-AREAWIDE				SERVICE AREA			
	Home Rule	First Class	Second Class	Third Class	Home Rule	First Class	Second Class	Third Class	Home Rule	First Class	Second Class	Third Class
Education	•	•	•	•	•	•	•	•	•	•	•	•
Taxation of Property	•	•	•	•	•	•	•	•	•	•	•	•
Taxation of Sales	◆	•	•	•	•	•	•	•	•	•	•	•
Plan, Plat., Land Use Reg.	◆	•	•	•	NA	•	•	•	NA	◆	⌘	◆
Transportation Systems	◆	⌘	⌘	⌘	NA	◆	⌘	⌘	NA	◆	⌘	◆
Water Pollution Control	◆	⌘	⌘	⌘	NA	◆	⌘	⌘	NA	◆	⌘	◆
Air Pollution Control	◆	⌘	⌘	⌘	NA	◆	⌘	⌘	NA	◆	⌘	◆
Regulation of Animals	◆	⌘	⌘	⌘	NA	◆	⌘	⌘	NA	◆	⌘	◆
License Day Care Facilities	◆	⌘	⌘	⌘	NA	◆	⌘	⌘	NA	◆	⌘	◆
Regulate Fireworks	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Solid Waste	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Housing Rehab	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Economic Development	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Roads & Trails	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
EMS Communications	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Regulate Motor Vehicles	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Development Projects	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆
Hazardous Substance Control	◆	★	☆	☆	NA	◆	⌘	⌘	⌘	◆	⌘	◆
Other Powers Not Prohibited	◆	★	☆	☆	NA	◆	⌘	⌘	NA	◆	⌘	◆

- A mandatory power which must be exercised in the manner set out in statute.
- ◆ A mandatory power, however, certain discretion is permitted regarding the manner in which the power is exercised.
- ◆ May be exercised in the manner set out in the home rule charter.
- ⌘ May be exercised by ordinance.
- \* May be exercised upon non-areawide voter approval.
- ★ May be exercised upon approval of the voters areawide or by transfer of power from all cities within the borough.
- ☆ May be exercised upon approval of the voters areawide, or transfer from all cities and approval of the voters non-areawide.
- ◆ May be exercised upon approval of voters in service area or by all property owners in service area.
- NA Not available
- ⊛ May be exercised upon approval of voters in service area, DNR for certain state lands.

**MANDATORY AREAWIDE DUTIES**

**"Areawide" means throughout the entire borough -- inside and outside cities.**

Home rule, first class and second class boroughs must exercise all of the powers noted in this section on an areawide basis.

Third class boroughs must exercise all of these powers on an areawide basis, except planning, platting and land use regulation.

- ◆ **Education.** All classes of borough must establish, maintain and operate a system of public schools on an areawide basis as provided in AS 14.14.060.
- ◆ **Assessment, Levy and Collection of Property Taxes.** All classes of borough must assess and collect property taxes that are levied within their boundaries (areawide, non-areawide, service area and city levies). State laws governing the assessment, levy and collection of property taxes apply equally to all classes of boroughs.
- ◆ **Levy and Collection of Sales and Use Taxes.** All classes of borough must collect sales and use taxes that are levied within their boundaries. Boroughs may levy sales and use taxes on an areawide, non-areawide and/or service area basis.

Not all of the State laws that govern the levy and collection of sales and use taxes apply to home rule boroughs (while they do apply to first, second and third class boroughs).

For example, State law requires that the adoption of a sales tax or an increase in the rate of a sales tax by a first, second or third class borough must be approved by a majority of the voters. That provision does not apply to a home rule borough.

Because the provision does not apply to a home rule borough, the borough's charter would dictate how the borough gains the authority to levy or increase the rate of levy of a sales tax. The charter could be written with terms identical to the law which applies to first and second class boroughs (i.e., a requirement for approval by a majority of the voters). Alternatively, the charter could impose an even greater standard (e.g., a requirement for approval by 2/3 of the voters). Conversely, the charter could allow the Assembly to set the sales tax rate without any requirement for voter approval.

- ◆ **Planning, platting and land use regulation.** Home rule, first class and second class boroughs must provide areawide planning, platting and land use regulation. Again, not all State laws governing such apply to home rule boroughs. First and second class boroughs must comply with all 20 sections in AS 29.40. However, home rule boroughs are compelled to follow only one full section of AS 29.40 and parts of another. For example, first and second class boroughs must adopt a comprehensive plan, however, a home rule borough has no such obligation unless required by charter or borough code. A third class borough is prohibited from exercising areawide planning, platting and land use regulation.

### OPTIONAL AREAWIDE POWERS

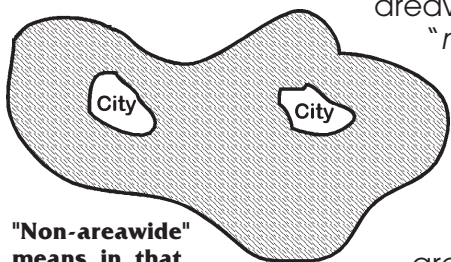
A home rule borough acquires additional areawide powers in the manner set out in its charter. Such might allow the borough to assume some or all powers on an areawide basis by simply adopting an ordinance. Conversely, it could require voter approval for the assumption of some or all additional areawide powers.

A first class or second class borough may assume 5 specific areawide powers by simply adopting an ordinance. These relate to transportation systems, water pollution control, air pollution control, licensing of day care facilities and regulation of animals.

A first class borough may assume any other areawide power "*not otherwise prohibited by law*" by a majority vote at an areawide election or by having the power transferred from all cities in the borough.

A second class borough may assume any other areawide power "*not otherwise prohibited by law*" by a majority vote at an areawide election, or having the power transferred from all cities in the borough and a majority vote at a non-areawide election.

**"Non-areawide" means in that part of the borough outside cities.**



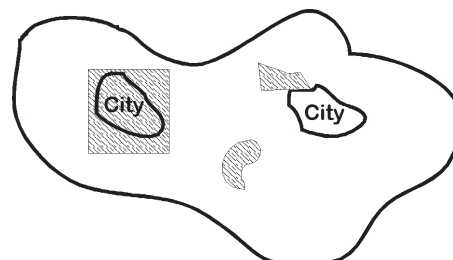
A third class borough is prohibited from exercising any other power on an areawide basis.

### OPTIONAL NON-AREAWIDE POWERS

A home rule borough acquires additional non-areawide powers in the manner set out in its charter. Such might allow the borough to assume some or all powers on a non-areawide basis by simply adopting an ordinance. Alternatively, it could require voter approval for the assumption of some or all additional non-areawide powers.

A first class borough may assume any non-areawide power "*not otherwise prohibited by law*" by adopting an ordinance.

A second class borough may assume 13 specific non-areawide powers by adopting an ordinance. These relate to: transportation systems, regulation of fireworks, regulation of animals, solid waste collection and disposal, air pollution control, water pollution control, housing rehabilitation, economic development, local service roads and trails, emergency services, communications, regulation of motor vehicles & operators, development projects, and hazardous substance control.



**"Service areas" are parts of the borough receiving higher levels of services -- a service area may include a city.**

A second class borough may assume any other non-areawide power "*not otherwise prohibited by law*" upon non-areawide voter approval.

A third class borough may by ordinance may exercise on a non-areawide basis the power necessary to clean-up or prevent a release of oil or

hazardous substance. A third class borough may not exercise other powers on a non-areawide basis.

### **SERVICE AREA POWERS**

A borough may create a service area to provide services which are not provided on an areawide or non-areawide basis. A service area may also be used to provide a higher level of service than that provided on an areawide or non-areawide basis (e.g., education, or planning).

A home rule borough gains authority to exercise powers on a service area basis in the manner set out in its charter. Such might allow the borough to exercise some or all service area powers by adopting an ordinance. Conversely, it could require voter approval for the exercise of some or all powers on a service area basis.

A first class borough may, by ordinance, exercise any power on a service area basis that is granted to a first class city or which can be provided on a non-areawide basis by a first class

borough. Such gives first class boroughs authority to exercise "*any power not prohibited by law*" on a service area basis.

A second class borough may also exercise on a service area basis, "*any power not prohibited by law.*" However, it must first gain approval from a majority of the voters in the proposed service area or all of the property owners in the proposed service area.

A third class borough may also exercise "*any power not otherwise prohibited by law*" upon approval of the voters residing in the service area. A third class borough may also establish a service area upon concurrence of the Department of Natural Resources, for an area including only vacant, unappropriated and unreserved state land classified for disposal to individuals. By ordinance a third class borough may provide services in a service area necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough. ■